IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH AT HYDERABAD

HON'BLE Mr. JUSTICE R. SUBHASH REDDY

Writ Petition No.32656 of 1998

TUESDAY, THE TWENTY SIXTH DAY OF JUNE TWO THOUSAND AND SEVEN

Between:

C. Siddaiah, S/o. Pedda Veeranna, aged about 33 years, Transport business, R/o. Dorasanipalli village, Proddatur Mandal, Cuddapah District.

… Petitioner

And

The Commissioner of Prohibition and Excise, Andhra Pradesh, Hyderabad, and others.

… Respondents

Order:

Petitioner has questioned the order dated 28-05-1998, passed by the second respondent, the Deputy Commissioner of Prohibition and Excise, Kurnool, in Rc.No.B2/253/97, confiscating his vehicle bearing No.KA-07-2399, as confirmed by the first respondent, the Commissioner of Prohibition and Excise, Hyderabad by order dated 26-10-1998 passed in CR.No.1515/DPE/98/B2.

2. On 17-12-1996, as per the instructions of the Assistant Prohibition and Excise Superintendent, Jammalamadugu, the Prohibition and Excise Circle Inspector, Proddatur along with his staff and panchayatdars intercepted the vehicle of the petitioner bearing No.KA-07-2399 on Proddatur – Jammalamadugu road and seized the said vehicle on the ground that it was carrying about 1160 litres of I.D. Liquor in 58 white plastic cans without valid permit, which is contrary to the provisions under Section 8(b) of the A.P. Prohibition Act, 1995 (for short 'the Act'). At the time of seizure, owner of the vehicle was not present and the statement of the driver was recorded while seizing the vehicle along with the contraband. Pursuant thereto, proceedings for confiscation were initiated by the Deputy Commissioner of Prohibition and Excise, Kurnool. Petitioner, the owner of the vehicle, was served with a show cause notice to explain why his vehicle bearing No.KA-07-2399 should not be confiscated as it was used for transporting I.D. liquor. Petitioner has filed his explanation stating that the said transportation was not in his knowledge and requested to drop the proceedings.

3. The primary authority, i.e. the Deputy Commissioner of Prohibition and Excise, Kurnool passed the order dated 28-05-1998 confiscating the vehicle of the petitioner, merely stating that the explanation submitted by the petitioner is not convincing as the driver himself had stated at the time of seizure that he was transporting the I.D. liquor to give to the owner, before the panchayatdars. Though petitioner had preferred an appeal against the order of the primary authority, before the Commissioner of Prohibition and Excise, Hyderabad the same was rejected, recording a finding that no material evidence has been placed before him to prove that the case is registered for statistical purpose by the Prohibition and Excise officials.

4. As I am inclined to remit the matter to the authorities for fresh consideration, I have not discussed in detail the merits of the case.

5. It is to be noted that petitioner has submitted detailed explanation to the show cause notice issued to him. However, neither the primary authority nor the appellate authority has considered the explanation and defence of the petitioner before passing the impugned orders. The primary authority has recorded a finding that the driver of the vehicle has given a statement at the time of seizure that he was transporting the I.D. liquor to the owner. Admittedly, the petitioner, who is the owner of the vehicle, was not present at the time of seizure and it appears that even the statement of the driver alleged to have been recorded at the time of seizure is also not furnished to the petitioner. Once confiscation proceedings are initiated, the authority empowered to pass orders on such proceedings shall take into account the explanation submitted to the show cause notice; but merely based on the sole statement of the driver of the vehicle, no order of confiscation could be passed. The impugned orders have been passed without examining various grounds raised by the petitioner in his explanation.

6. This court in **G. Narasa Reddy Vs. Commissioner of Prohibition and Excise, A.P.,** [1] held that if the transportation of the contraband is undertaken without the knowledge of the owner, it is not liable for confiscation. In view of the stand taken by the petitioner in the explanation submitted by him, the matter has to be considered by the authorities afresh. Accordingly, the orders under challenge, i.e. order dated 28-05-1998, passed by the second respondent, the Deputy Commissioner of Prohibition and Excise, Kurnool, in Rc.No.B2/253/97, and the order dated 26-10-1998, passed by the first respondent, the Commissioner of Prohibition and Excise, Hyderabad in

CR.No.1515/DPE/98/B2 are set aside. The matter is remitted for fresh consideration by the Deputy Commissioner of Prohibition and Excise, Kurnool, who shall pass appropriate orders within a period of three months from the date of receipt of this order. Till such time, petitioner shall continue the bank guarantee furnished by him.

7. The Writ Petition is allowed to the extent indicated above. No order as to costs.

JUSTICE R. SUBHASH REDDY.

June 26, 2007
MRR

[1] **2002 (2) ALT 690**